

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

HERMAN DELFY	:	CIVIL ACTION
	:	
v.	:	NO. 07-2823
	:	
JOSEPH J. PIAZZA, et al.	:	

ORDER

_____ **AND NOW**, this 6th day of November, 2007, upon consideration of the Petition for Writ of Habeas Corpus (Docket No. 1), the Respondents' Answer to Petition for Writ of Habeas Corpus, the Report and Recommendation filed by United States Magistrate Judge Thomas J. Rueter, the petitioner's motion to stay, and after a thorough and independent review of the record, it is **ORDERED** that:

1. The Report and Recommendation of Magistrate Judge Thomas J. Rueter is **APPROVED** and **ADOPTED**;
2. The Petition for Writ of Habeas Corpus is **DISMISSED WITHOUT PREJUDICE**¹; and,
3. There is no probable cause to issue a certificate of appealability.

/Timothy J. Savage
TIMOTHY J. SAVAGE, J.

¹As the Magistrate Judge determined, the petitioner had until November 29, 2007, to seek collateral relief from the state court. In a motion filed after the Report and Recommendation was issued, petitioner advised that he has a pending PCRA petition in the state court, having filed it on July 19, 2007.

The petitioner is reminded that he will have only a short period of time within which to file a petition for a writ of habeas corpus in this court once the state court has ruled on his pending petition.